IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.345 OF 2003

Mujeeb Ahmed Md.Mustafa ...Petitioner
Vs.
The Inspector,
City Police Station,
Malegaon,Dist.Nashik & Ors. ...Respondents

Shri N.R.Bubna for the Petitioner.
Shri Suresh Sabrad for the Respondent No.3.
Shri Mandar Goswami for the Respondent No.4.
Shri Anilkumar Patil for the Respondent No.6.
Ms M.H. Mhatre, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 05, 2005.

P.C.:

1. The Advocate for the Petitioner states that the Respondent Nos.3 and 4 are served with the notice and the affidavit of service has been filed. The Respondent Nos.3 and 4 are represented by Advocates.

2. The challenge in this Petition under Article 227 of the Constitution of India is to the order dated 04th January, 2003 passed by the learned Additional Sessions Judge, Malegaon in Criminal Revision Application filed by the Petitioner as well as to the order dated 20th September, 2000 passed by the Sub-Divisional Magistrate, Sub-Division, Malegaon under section 141 of the Code of Criminal Procedure, 1973.

3. The learned Advocate for the Petitioner submitted that the order dated 20th September, 2000 is passed without notice to the Petitioner and without giving an opportunity of being heard to the Petitioner. He contended that the Petitioner is a co-owner of the property on which the building in question was located. He submitted that the Revision Application preferred by the Petitioner has not been heard on merits. He, therefore, submitted that interference is called for.

4. The learned Counsel appearing for the Respondent No.6 submitted that there is nothing on record to show that the Petitioner has any right, title or interest in the property in question. He submitted that as the Petitioner is not concerned with the property, he has no locus to challenge the order passed by the Sub-Divisional Magistrate by filing Revision Application and therefore, the Revision Application was rightly dismissed. He placed reliance on the affidavit of the Respondent No.6. He pointed out that in paragraph No.5 of the Petition an incorrect statement has been made that the Regular Civil Suit No.285 of 1995 has been filed by the Petitioner. He pointed out that the said suit is not filed by the Petitioner but it is filed by aunt of the

Petitioner and present Petitioner is one of the Defendants. He submitted that no interference is called for. I have also heard the learned Advocate appearing for the Respondent No.3 and the Advocate for the Respondent No.4 and the learned A.P.P. for the State.

5. The learned Advocate for the Petitioner pointed out that the statement made in paragraph No.5 of the Petition is as a result of an inadvertent mistake on his part while drafting the Petition and there was no intention to mislead the Court.

6. I have considered the submissions. By order dated 20th September, 2000 the Sub-Divisional Magistrate has directed demolishion of a building consisting of two floors. On plain reading of the order passed, it is apparent that the Petitioner was not a party to the proceedings. The Petitioner claims to be affected by the said order and therefore, filed the Revision Application in the Sessions Court for challenging the order passed by the Sub-Divisional Magistrate. In the Revision Application, the Petitioner claimed to has right, title or interest in the property. The learned Counsel for the Respondent No.6 has contended that there is no document on record

to show that the Petitioner had any right, title or interest in the property. It is pertinent to note that Revision Application filed by the Petitioner has not been rejected on the ground that the Petitioner has no right in respect of the property. By a short order, Revision Application has been rejected which reads thus:

> Heard both sides the impugned order is already executed. The disputed structure is not in existence. Moreover, petitioner is at liberty to agitate and get decided the right in civil suit which is pending. In such circumstance, this Petition is infructuous so I pass following order.

7. In my view, the approach of the learned Additional Sessions Judge is completely erroneous. Merely because the order was already implemented is no ground to dismiss Revision Application by observing that it has become infructuous. The learned Additional Sessions Judge was required to consider the merits of the Revision Application and he could not have dismissed the Revision Application only on the ground that it has become infructuous. As a matter of

fact, it cannot be stated that Revision Application had become infructuous. If the Revision Application at the instance of the Petitioner was maintainable, appropriate order could have been always passed provided it was established that the order of Magistrate was illegal.

8. Whether the Petitioner has any right, title and interest in the property in dispute and whether he could have filed a Revision Application are the questions which ought to have been decided by the learned Sessions Judge. As the Revision Application has been rejected without considering the merits of the contentions raised therein, the impugned order deserves to be set aside only on that ground and it is necessary to direct the learned Additional Sessions Judge to hear the Revision Application afresh. It is obvious that learned Additional Sessions Judge will consider merits of the Application including the contentions raised by the Respondents that the Petitioner has no right, title or interest in the property in dispute and that the Petitioner has no locus standi to file the Revision Application.

9. Hence, I pass the following order:

: O R D E R :

i) The impugned order dated 04th January, 2003 is set aside and Criminal Revision Application No.231 of 2000 is restored.

ii) Parties are directed to appear before the learned Additional Sessions Judge, Malegaon on 14th November, 2005 at 11.00 a.m.

iii) The learned Additional Sessions Judge will decide the Revision Application made by the Petitioner expeditiously. The Revision Application will be decided on its own merits.

iv) All the contentions of the parties including the contention of the Respondent No.6 regarding the maintainability of the Revision Application at the instance of the Petitioner are expressly kept open.

v) Rule is made absolute in above terms with no orders as to costs.

vi) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE